

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

KENNETH G. WILLIAMS,

Plaintiff,

Civil No. 06-1007-JO

v.

ORDER

STATE OF OREGON, et al.,

Defendants.

JONES, District Judge.

Plaintiff filed a Complaint pursuant to 42 U.S.C. § 1983 in which he challenges the conditions of his confinement. Currently before this court is defendants' Un-enumerated 12B Motion to Dismiss (#17) based on plaintiff's alleged failure to exhaust his administrative remedies.

The Ninth Circuit has determined that inmates are entitled to notice under Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998) before being required to respond to a motion to dismiss for failing to exhaust administrative remedies. See Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003). Accordingly, plaintiff is ADVISED as follows:

NOTICE - WARNING

***This Notice is Required to be Given
to You by the Court***

Defendants have filed an unenumerated Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b) based on your alleged failure to exhaust your administrative remedies. Such a motion, if granted, will end your case.

When a party you are suing makes such a motion to dismiss for failure to exhaust that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says or make general allegations about what you may be able to prove. Instead, you must set out specific facts in declarations or other authenticated documents, that contradict the facts shown in the defendants' declarations and documents. If you do not submit your own evidence in opposition, and the defendants' evidence establishes that you did not exhaust your administrative remedies, defendants' motion to dismiss will be granted and your case will be dismissed.

CONCLUSION

Plaintiff is allowed 30 days from the date of this order to submit evidence in response to defendants' Motion to Dismiss (#17). Defendants are allowed 15 days from the date of any such submission to respond. The Clerk of Court is requested to reset the Under Advisement date for defendants' Motion (#17) 45 days from the date of this Order.

IT IS SO ORDERED

DATED this 21st day of August, 2007.

/s/

Robert E. Jones
United States District Judge